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PREPARATORY COMMISSION FOR THE INTERNATIONAL
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First session
Kingston, Jamaica
15 March to 8 or 22 April 1983

Organization of Work of the Preparatory Commission

Note by the secretariat

1. The Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea has a special character due to the nature of the functions entrusted to it under resolutions I and II of the Third United Nations Conference on the Law of the Sea. The Commission will have to undertake a wide range of specific and detailed tasks encompassing the legislative, administrative and executory, and complete them within an as yet unknown but possibly limited time frame.

2. Clearly the Preparatory Commission cannot function effectively unless certain preliminary matters are dealt with which will affect the organization of its work, including the sequence of its activities. Much will depend on how the Commission interprets its mandate. Under the resolutions the Commission is mandated to establish Special Commissions on the Enterprise and on the problems of developing land-based producer States. Beyond that it has the latitude to create "such subsidiary bodies as are necessary for the exercise of its fuctions". Decisions on structure and internal functioning of the Commission will be influenced by its perception of its mandate and the priorities it assigns to the various issues in organizing its work.

3. The first task of the Commission is to adopt its own rules of procedure so as to set the stage for consideration of other matters, including the question of the organization of its work. The rules in themselves would reflect some basic organizational decisions which would in turn influence the subsequent organization and programming of work. Among the important aspects to be considered in formulating the rules of procedure are the following: participation by signatories to the Final Act and other observers; functioning of the Special Commissions established in paragraphs 8 and 9 of resolution I and their rules of procedure; establishment of and functioning of other subsidiary bodies under paragraph 7 of resolution I;

mechanism(s) for decision-making. To aid in this process, and to provide a starting point for addressing these questions, the secretariat has prepared draft rules of procedure for the Preparatory Commission. These draft rules are designed to provide flexibility; they draw heavily from precedent and are intended to identify the issues and provide examples of options, where possible. In this regard, particular attention is drawn to the note preceding draft rules on decision-making.

4. As a second step, certain very important policy decisions regarding interpretation and implementation of the two resolutions must be taken. One salient example arises with respect to resolution II governing preparatory investment in pioneer activities, the implementation of which requires the consideration and adoption of regulations. Particular issues in this regard include procedures for the receipt, processing and registration of applications for pioneer investor status, processing of information on the resolution of conflicts with respect to overlapping claims, and other administrative duties with respect to the early operation of the system governing the pioneer activities. Until such time as the regulations for implementing resolution II can be adopted the Preparatory Commission cannot be considered to have begun to function in the sense referred to in paragraph 2 of that resolution.

5. The implementation of resolution II raises questions which touch upon and are intimately related to issues to be considered in connection with other items within the mandate of the Commission, most particularly the preparation of the rules, regulations and procedures of the Authority governing activities in the Area. In view of this, the Commission faces two general organizational options: to treat resolution II independently or to link it as appropriate with other items in its mandate, particularly as regards certain of the rules, regulations and procedures of the Authority governing activities in the Area. In addition to the implications that the implementation of resolution II has on the organization of work of the Commission, attention should be paid to the secretariat services that would be required to facilitate the effective functioning of the Preparatory Commission in carrying out the responsibilities under resolution II.

6. When the Preparatory Commission can begin to address the many functions assigned to it by paragraph 5 of resolution I, it should be borne in mind for programme of work purposes that some subparagraphs of that paragraph encompass several different kinds of issues which need not particularly be considered in conjunction with each other. Here again, certain preliminary decisions should be taken before a rational organization of work can be determined. Furthermore, decisions may be required on the allocation of issues which fall within the penumbra of several items.

7. Subparagraph (g) of paragraph 5 of resolution I, which calls for the formulation of draft rules, regulations and procedures of the Authority, presents a good example of the kind of situation requiring such prior decisions. That subparagraph contains a very broad category of matters ranging from the internal administration (secretariat, commissions, Enterprise, etc.) and financial management of the Authority itself to the rules for the development of resources

of the Area. The Preparatory Commission may find it more expedient to deal with administration and management questions in conjunction with matters pertaining to the first budget of the Authority or to the secretariat, under paragraphs 5 (c) and (e), it may decide, as mentioned above, that rules, regulations and procedures for operations under the Convention should be dealt with in conjunction with resolution II; that rules, regulations and procedures governing the Enterprise should be considered by the Special Commission on the Enterprise; or that paragraph 5 (g) should be treated as a discrete subject.

8. It must therefore be reiterated that the presentation of the issues herein is preliminary in nature, and is without prejudice to any decisions which the Preparatory Commission may take regarding its organization of work. Consequently, the format will require further rationalization and elaboration in the light of such decisions once they are taken. It is in this context that the following brief and preliminary outline of subjects to be addressed by the Preparatory Commission is presented. Matters pertaining to executory and administrative functions are presented first, followed by legislative drafting functions, and finally by recommendatory functions. However, all items contain aspects of all three classifications, and the listing should not be considered as determinative in any way. Nor is the listing exhaustive or intended to convey any allocation of priorities, and it should not in any respect be construed as conveying such.

9. Matters requiring consideration by the Preparatory Commission

(a) Regulations for implementing resolution II, including, inter alia, administrative procedures for receipt, processing and registration of applications, designation of reserved and pioneer areas, relinquishment of portions of areas, compliance, periodic expenditures and other obligations incumbent upon the pioneer investor.

(b) Delimitation of the Area; mechanism for the receipt and processing of charts or lists of co-ordinates relevant to the delimitation of the Area and for providing information thereon.

(c) Measures for the early entry into effective operation of the Enterprise, including:

(i) Different operational options;

(ii) Project formulation, including feasibility study.

(iii) Staffing requirements including training;

(iv) Choice of technologies;

(v) Projection of financial requirements.

(d) Draft rules of procedure of the Assembly (resolution I, paragraph 5 (b)), including requests for advisory opinions, and approval of scale of assessments.

(e) Draft rules of procedure of the Council (resolution I, paragraph 5 (b)); consideration in this connection could be given to the question of draft rules of procedure of commissions of the Council.

(f) Draft rules, regulations and procedures (resolution I, paragraph 5 (g)) to be submitted to the Authority and applied provisionally by it, pending formal adoption, on inter alia:

(i) Institutional matters, including financial management and internal administration of the Authority;

Note: In formulating these rules, regulations and procedures, the Preparatory Commission will have to consider the appropriate mechanisms within the Authority to deal with decisions or determinations called for under the Convention but which are not specifically allocated to any organ.

(ii) Matters concerning the conditions for prospecting, exploration and exploitation.

Note: The Preparatory Commission will have to decide upon the format that these draft rules, regulations and procedures will take, i.e. will there be one comprehensive code, or several specific sets of separate regulations.

(g) Studies and recommendations on the problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the Area with a view to minimizing their difficulties and helping them to make the necessary economic adjustment, including studies on the establishment of a compensation fund.

(h) Provisional agenda for the first session of the Assembly and of the Council (resolution I, paragraph 5 (a)), including, as appropriate, recommendations relating to items thereon.

(i) Recommendations on:

(i) The budget for the first financial period of the Authority (resolution I, paragraph 5 (c));

(ii) The relationship between the Authority and the United Nations and other international organizations (resolution I, paragraph 5 (d)),

(iii) The secretariat of the Authority (resolution I, paragraph (e)), including staff rules;

(iv) The establishment of the headquarters of the Authority (resolution I, paragraph 5 (f));

(v) Marine scientific research responsibilities of the Authority;

(vi) Responsibilities of the Authority as to the development and transfer of marine technology in the Area.

(j) Report containing recommendations for submission to States Parties at a meeting to be convened in accordance with Annex VI of the Convention, regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea.

(k) Final report on all matters within the mandate of the Preparatory Commission for presentation to the Assembly at its first session.

10. All of the above topics must be further elaborated in the light of the preliminary decisions to be taken by the Preparatory Commission.